



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUDIT REFERRAL #13-01

February 26, 2013

MEMORANDUM

To: Anthony Herman
General Counsel

Through: Alec Palmer
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Tom Hintermister *TH*
Assistant Staff Director
Audit Division

Marty Favin *MLF*
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Subject: Maine Republican Party (A09-09) - Referral Matters

On February 14, 2013, the Commission approved the Final Audit Report of the Commission on the Maine Republican Party. This report includes the following matters that are referable:

Finding 1. Misstatement of Financial Activity (2007 Disbursements only; however, please note all has been lost to the statute of limitations)

Finding 4. Failure to File Notices and Properly Disclose Independent Expenditures

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Alex Boniewicz at 694-1200.

Attachments:

Finding 1. Misstatement of Financial Activity (2007 Disbursements only)

Finding 4. Failure to File Notices and Properly Disclose Independent Expenditures
Chart - Monthly Loss Due to SOL

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Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of MRP's reported figures with bank records revealed a misstatement of receipts, disbursements and cash-on-hand in both 2007 and 2008. For 2007, MRP overstated beginning cash-on-hand by \$5,636, understated receipts by \$22,461, understated disbursements by \$29,346 and overstated ending cash-on-hand by \$12,521. For 2008, MRP overstated receipts, disbursements and ending cash-on-hand by \$53,727, \$46,985 and \$19,263, respectively. In its response to the Interim Audit Report, MRP stated that it had amended its reports as requested. However, those amendments did not materially correct the misstatements.

In response to the Draft Final Audit Report, MRP filed amended reports that were materially misstated. MRP indicated that the remaining misstatements will be corrected and amended reports will be filed. MRP subsequently filed additional amendments that materially corrected the misstatements.

The Commission approved a finding that MRP misstated its financial activity for calendar years 2007 and 2008.

Legal Standard

Content of Reports. Each report must disclose:

- the amount of cash-on-hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled MRP's reported activity with bank records for calendar years 2007 and 2008. The following charts outline the discrepancies for the beginning cash balances, receipts, disbursements and ending cash balances for each year. Succeeding paragraphs address the reasons for the misstatements.

2007 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2007	\$7,524	\$1,888	\$5,636 Overstated
Receipts	\$223,515	\$245,976	\$22,461 Understated
Disbursements	\$209,782	\$239,128	\$29,346 Understated
Ending Cash Balance @ December 31, 2007	\$21,257	\$8,736	\$12,521 Overstated

MRP overstated beginning cash-on-hand by \$5,636. This overstatement is unexplained but it likely resulted from prior-period discrepancies.

The understatement of receipts was the result of the following:

- Receipts reported, not supported by a credit or deposit \$ (186)

• Deposited receipts, not reported	22,533
• Interest from non-federal account reported	(28)
• Unexplained difference	142
Net Understatement of Receipts	\$ 22,461

The understatement of disbursements was the result of the following:

• Disbursements not reported	\$ 36,506
• Disbursements reported, not supported by check or debit	(4,006)
• Disbursement from non-federal account reported in error	(3,165)
• Disbursement amounts incorrectly reported	227
• Unexplained difference	(216)
Net Understatement of Disbursements	\$ 29,346

The \$12,521 overstatement of the ending cash-on-hand was the result of the misstatements described above.

2008 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2008	\$21,257	\$8,736	\$12,521 Overstated
Receipts	\$1,230,335	\$1,176,608	\$53,727 Overstated
Disbursements	\$1,202,718	\$1,155,733	\$46,985 Overstated
Ending Cash Balance @ December 31, 2008	\$48,874	\$29,611	\$19,263 Overstated

MRP overstated beginning cash-on-hand by \$12,521, a carryover of the misstatement of ending cash-on-hand for 2007.

The overstatement of receipts resulted from the following:

• Receipts reported but deposited in non-federal account	\$ 52,353
• Unexplained difference	1,374
Overstatement of Receipts	\$ 53,727

The overstatement of disbursements resulted from the following:

• Disbursements reported, not supported by check or debit	\$ (32,736)
• Disbursements not reported	26,881
• Disbursement from non-federal account reported in error	(42,916)
• Debit to reverse deposited contribution reported	(5,000)
• Disbursement reported twice	(56)
• Disbursement amount incorrectly reported	(1,200)
• Unexplained difference	8,042
Net Overstatement of Disbursements	\$ 46,985

The \$19,263 overstatement of the ending cash-on-hand resulted from the misstatements described above.

Prior to the audit, MRP made the Commission aware that an employee of the accounting firm it used had embezzled \$48,000. The individual, who had kept MRP's books for both its federal

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and non-federal accounts and prepared the reports to the Commission, pleaded guilty to the embezzlement. As of the time of the audit, the individual had paid restitution of \$39,531 and MRP had filed reports disclosing the embezzlement. MRP conducted a full audit of its books and internal controls and, as recommended by its auditor, has instituted improved internal controls. In addition, MRP has hired a different accounting firm.

The Audit staff's 2008 reconciliation included adjustments related to the embezzlement. Specifically, the adjustment for unreported disbursements of \$26,881 includes \$5,997 in disbursements that were associated with the embezzlement and not reported by MRP. In addition, the adjustment for disbursements reported that were not supported by a check or debit (\$32,736) includes disbursements of \$14,316 that were associated with the embezzlement.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the misstatements for 2007 and 2008 with MRP representatives during the exit conference and provided copies of relevant work papers detailing the misstatements. The MRP representatives stated that necessary amended reports would be filed.

The Interim Audit Report recommended that MRP:

- amend its reports to correct the misstatements for 2007 and 2008 as noted above; and,
- amend its most recently filed report to correct the cash-on-hand balance with an explanation that the change resulted from a prior period audit adjustment.

Further, MRP should have reconciled the cash balance of its most recent report to identify any subsequent discrepancies that may have affected the adjustment recommended by the Audit staff.

C. Committee Response to Interim Audit Report

In its response to the Interim Audit Report, MRP stated it had amended its reports as requested. However, those amendments did not materially correct the misstatements. The Audit staff advised MRP of the additional corrections that needed to be made.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that MRP filed amended reports to correct the misstatements. Those amendments, however, did not materially correct the misstatements.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MRP filed amended reports that were materially misstated. MRP indicated that the remaining misstatements would be corrected and amended reports would be filed. MRP subsequently filed additional amendments that materially corrected the misstatements.

Commission Conclusion

On November 15, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that MRP misstated its financial activity for calendar years 2007 and 2008.

The Commission approved the Audit staff's recommendation.

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Finding 4. Failure to File Notices and Properly Disclose Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed disbursements and noted expenditures for printed materials totaling \$56,601, which appeared to be independent expenditures that MRP disclosed as operating expenditures. In its response to the Interim Audit Report, MRP agreed that these are independent expenditures. However, due to software issues, MRP was able to correct the disclosure of these payments only partially.

In response to the Draft Final Audit Report, MRP complied with the Audit staff's recommendation by filing amended reports that disclosed the remaining \$28,300 as independent expenditures.

The Commission approved a finding that MRP improperly disclosed independent expenditures totaling \$56,601.

Legal Standard

A. Definition of Independent Expenditures. The term "independent expenditure" means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in coordination with any candidate or authorized committee or agent of a candidate. 11 CFR §100.16.

B. Disclosure Requirements – General Guidelines. An independent expenditure shall be reported on Schedule E (Itemized Independent Expenditures) if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as "memo" entries on Schedule E and as a reportable debt on Schedule D. Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

C. Last-Minute Independent Expenditure Reports (24-Hour Notices). Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election, must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour notice is required each time additional independent expenditures aggregate \$1,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

D. Last-Minute Independent Expenditure Reports (48-Hour Notices). Any independent expenditure aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must be disclosed within 48

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hours each time the expenditures aggregate \$10,000 or more. The notices must be filed with the Commission within 48 hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).

E. Allocation of Expenses Between Candidates. Expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit expected to be derived. In the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to all candidates. This method shall be used to allocate payments involving both clearly identified federal candidates and one or more clearly identified non-federal candidates. 11 CFR §106.1(a).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed MRP's disbursements and identified a payment of \$84,902 for printed materials reported as an operating expenditure. Of this amount, it was calculated that \$56,601 appeared to be apparent independent expenditures. A review of the printed materials revealed the following:

- The "Absentee Ballot Application Self Mailer" invoice billed MRP for two mailers. Both mailers pictured Presidential candidate Senator John McCain and Vice-Presidential candidate Governor Sarah Palin on a sample absentee ballot with checked boxes below their pictures, advocating their election.
- In addition, one sample mailer also pictured Susan Collins, candidate for the U. S. Senate and Charlie Summers, candidate for the U. S. House of Representatives. The other sample provided a picture only of Susan Collins, but provided space for a congressional candidate.
- Both mailers had space provided for a state senate candidate and a state house candidate.
- Above the pictures of the candidates, both samples state "Good Jobs. A Strong Economy. Independence from Foreign Oil." In addition, the mailers state, "Help Team Maine Today by Signing Up to...Canvass a local precinct door to door."

Since the documents contain a statement of the candidates' positions on several issues and include the solicitation of volunteer canvassing, they go beyond the limitations of the slate card exemption¹. As a result, the Audit staff concluded that a portion of each mailer was an independent expenditure that should have been reported as such and that appropriate 24/48-hour notices should have been filed. The amount of independent expenditures (\$56,601) was determined by the space allotted to federal candidates versus non-federal candidates on the mailers. The remaining \$28,301 (\$84,902 - \$56,601) should have been reported as FEA.

B. Interim Audit Report & Audit Division Recommendation

At an exit conference, the Audit staff addressed this matter, having previously provided MRP with the materials for discussion. MRP representatives stated that they would look into this matter, examine the materials, and address the "slate card" exemption. In response to the exit conference, MRP's Treasurer stated that the materials in question were slate cards and, as such, were exempt from independent expenditure rules.

The Interim Audit Report recommended that MRP take the following action:

¹ See 11 C.F.R. §§ 100.80, 100.146, Advisory Opinions 2008-06 (Democratic Party of Virginia), 1978-89 (Withers for Congress), 1978-9 (Republican State Central Committee of Iowa).

- Provide evidence that would demonstrate that these disbursements were not independent expenditures and therefore did not require disclosure as such.
- Absent such a demonstration, MRP should have amended its reports to disclose disbursements of \$56,601 as independent expenditures on Schedule E; and, disclosed the remaining \$28,301 on Schedule B as FEA; and
- Submit and implement revised procedures for recognizing and reporting independent expenditures, to allow for timely filing of 24/48-hour reporting notices, as required.

C. Committee Response to Interim Audit Report

In its response to the Interim Audit Report, MRP stated that the expenditure in question was an "Absentee Ballot Application Self Mailer," which included at least three federal and non-federal candidates, and that the previous treasurer apparently believed this qualified for the "slate card" exemption. After review of these materials, MRP agreed that the "slate card" exemption did not apply. MRP amended its reports to disclose part of these independent expenditures. MRP cited its software's inability to process the required disclosure information for the remaining independent expenditures. MRP data staff were working on the problem.

D. Draft Final Audit Report

In the Draft Final Audit Report, the Audit staff acknowledged that MRP filed amended reports to partially disclose these independent expenditures and that it was still working to disclose the remaining independent expenditures.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, MRP materially complied with the Audit staff's recommendation by filing amended reports that disclosed the remaining \$28,300 as independent expenditures.

Commission Conclusion

On November 15, 2012, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that MRP improperly disclosed independent expenditures totaling \$56,601.

The Commission approved the Audit staff's recommendation.

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Maine Republican Party
Monthly Loss due to SOL Chart - Referral Matters

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	0.86%	4.08%	4.41%	5.83%	7.11%	11.73%	19.55%	30.94%	62.01%	88.39%	100.00%
Total Violations per Month	\$ 378.01	\$ 1,418.10	\$ 139.00	\$ 625.00	\$ 559.43	\$ 2,058.24	\$ 3,408.62	\$ 5,000.00	\$ 13,641.10	\$ 12,079.07	\$ 4,669.91
Aggregate Violations per Month	\$ 378.01	\$ 1,796.11	\$ 1,935.11	\$ 2,580.11	\$ 3,119.54	\$ 5,177.78	\$ 8,594.40	\$ 13,594.40	\$ 27,225.50	\$ 39,244.57	\$ 43,904.49
% of Violations Lost to SOL	0.86%	4.08%	4.41%	5.83%	7.11%	11.73%	19.55%	30.94%	62.01%	88.39%	100.00%